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CHUN CHENG YEH, a/k/a ALEX YEH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

CHUN CHENG YEH, a/k/a ALEX YEH,

Defendant.

CASE NO. CR-10-0231-WHA

DEFENDANT'S OBJECTIONS TO GOVERNMENT'S SENTENCING MEMORANDUM

DATE: MARCH 1, 2016

TIME: 2:00 P.M.

CTRM: 8

Defendant Alex Yeh, by and through counsel, after reviewing the United States' Sentencing Memorandum filed on February 23, 2016 ("USSM"), files the following objections for the Court's consideration at the sentencing hearing.

First, Mr. Yeh objects to the government's characterization regarding Mr. Yeh's position and role in the conspiracy, with citations to the Indictment as support. Specifically, the government states in its Sentencing Memorandum: "Although not the highest-ranking Chungwa executive involved in the conspiracy, Yeh was a management-level employee who, at times, had the authority to make pricing decisions." USSM at 5:6-8. Further, the government argues that Mr. Yeh "was involved in the implementation of the agreements reached at those meetings and the monitoring of those agreements." *Id.* at 7:2-3. "Defendant Yeh had an important role in this

1 implementation feature of the competitor meetings and agreements.” *Id.* at 9:4-5. The parties
2 negotiated and agreed to a factual basis for the guilty plea entered by Mr. Yeh, and memorialized
3 those facts in the Plea Agreement. In its sentencing memorandum, the government draws not
4 from those agreed facts, but rather from the Indictment, which contains allegations that are
5 unproven.

6 Mr. Yeh has consistently informed the government, and proffered evidence, that he never
7 held a vice-president or corporate executive position with Chunghwa, and that all of the other
8 individuals indicted (and many who were not indicted) held positions far senior to his, not just
9 within Chunghwa, but also within their respective other companies. Furthermore, Mr. Yeh has
10 explained that he had neither authority to make pricing decisions nor any ability to implement or
11 police the agreements reached. Mr. Yeh was a foot soldier whose actions had to be directed and
12 approved by his superiors at every juncture. Mr. Yeh has, by pleading guilty, clearly
13 acknowledged responsibility for his conduct, but wants to make sure that the Court understands
14 his position in the very formal hierarchy which exists in the Asian business culture in general,
15 and in the company for which he worked and the other companies which were participants in the
16 charged conspiracy specifically.

17 Second, the government’s sentencing memo repeatedly characterizes Mr. Yeh as a
18 “fugitive.” However, Mr. Yeh has never been a fugitive from justice. The Ninth Circuit has held
19 that a person is not a fugitive where the alien’s attorney, and the court, knew the alien’s location.
20 *Sun v. Mukasey*, 555 F.3d 802, 805 (9th Cir. 2009). A foreign defendant who was never present
21 in the jurisdiction and did not flee from it to avoid prosecution or punishment is not a fugitive.
22 *United States v. Hijazi*, 589 F.3d 401 (7th Cir. 2009). When an individual was not present in the
23 jurisdiction at the time of the conduct at issue, and did not reside in the jurisdiction at any time
24 thereafter, he may not be considered a fugitive simply because he remains outside of the
25 jurisdiction. See *United States v. Belimex*, 340 F.Supp. 466, 470 (S.D.N.Y. 1971). Mr. Yeh was
26 not present in the United States when his criminal conduct occurred, and he did not flee the
27 United States to avoid prosecution. He is a citizen and resident of Taiwan. He was not subject to
28 the jurisdiction of this Court until he voluntarily chose to travel here to face and resolve the

1 charges against him, and thus cannot be characterized as a fugitive.

2 Finally, Mr. Yeh objects to the government's comparison between Mr. Yeh's sentence
3 and the sentences received by defendants in a different conspiracy as having little bearing on the
4 appropriate sentence in this case.

5 DATED: February 26, 2016

Respectfully submitted,

6 SCHWARTZ & CERA CALIFORNIA PC

7 /s/
8 DOUGLAS R. SCHWARTZ
9 PETRA M. REINECKE
10 Attorneys for Defendant
11 ALEX YEH

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